

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS, IV,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No. 1:20-cv-00547-DAD-BAM (PC)

ORDER GRANTING PLAINTIFF'S MOTION
FOR RECONSIDERATION, REOPENING
THE CASE, AND REFERRING THE CASE
BACK TO THE ASSIGNED MAGISTRATE
JUDGE

(Doc. No. 36)

Plaintiff George E. Jacobs, IV is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 6, 2021, the assigned magistrate judge issued findings and recommendations, recommending that this action be dismissed with prejudice due to plaintiff's failure to state a claim, failure to obey a court order, and failure to prosecute. (Doc. No. 11.) On July 13, 2021, the undersigned issued an order granting plaintiff one final twenty-one (21) day extension to file an amended complaint based in part on plaintiff's assurances that he was prepared to file an amended complaint addressing the previously noted deficiencies in his original complaint. (Doc. No. 31 at 5.) The court advised plaintiff that "any failure to file an amended complaint or notice

1 of voluntary dismissal will result in the dismissal of his complaint with prejudice.” (*Id.*) Plaintiff
2 did not file an amended complaint or motion for an extension of time and on August 17, 2021, the
3 court accordingly adopted the findings and recommendations in full and dismissed the case due to
4 plaintiff’s failure to prosecute, failure to state a claim, and failure to comply with a court order.
5 (Doc. No. 32.)

6 On September 1, 2021, plaintiff filed a motion for reconsideration of the August 17, 2021
7 order adopting the magistrate judge’s findings and recommendations and dismissing this case due
8 to plaintiff’s failure to prosecute, failure to state a claim, and failure to comply with a court order.
9 (Doc. No. 36.)

10 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
11 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
12 on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
13 evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
14 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”
15 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
16 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

17 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
18 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
19 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted); *see also Harvest v. Castro*, 531 F.3d
20 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). In seeking
21 reconsideration under Rule 60, the moving party “must demonstrate both injury and
22 circumstances beyond his control.” *Harvest*, 531 F.3d at 749 (internal quotation marks and
23 citation omitted).

24 “A motion for reconsideration should not be granted, absent highly unusual
25 circumstances, unless the district court is presented with newly discovered evidence, committed
26 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
27 raise arguments or present evidence for the first time when they could reasonably have been
28 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571

1 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
2 original). Further, Local Rule 230(j) requires, in relevant part, that a movant show “what new or
3 different facts or circumstances are claimed to exist which did not exist or were not shown”
4 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
5 not shown” at the time the substance of the order which is objected to was considered.

6 In his motion for reconsideration, plaintiff argues that he did not receive the court’s
7 previous order (Doc. No. 31) directing him to file his first amended complaint until August 3,
8 2021. (Doc. No. 36 at 15.) The deadline for plaintiff to respond to that order was August 4,
9 2021. Plaintiff contends that it was therefore impossible for him to comply with the order.
10 Indeed, it appears true that plaintiff did not receive the court’s order in timely manner. (*Id.*)
11 Plaintiff’s incoming mail logs show that he did not receive the court’s order until August 3, 2021.
12 Moreover, plaintiff avers that he had prepared a first amended complaint and was awaiting the
13 court’s order and directions before filing it. (*Id.* at 6.) This also appears credible given that the
14 court received plaintiff’s first amended complaint on September 1, 2021 along with this pending
15 motion for reconsideration. (Doc. No. 35.) Given the evidence plaintiff has provided the court,
16 the undersigned concludes that plaintiff’s motion for reconsideration should be granted and
17 plaintiff should be allowed to proceed on his first amended complaint. This action will
18 accordingly be re-opened and referred back to the assigned magistrate judge for the screening of
19 plaintiff’s now operative first amended complaint.

20 Accordingly,

- 21 1. Plaintiff’s motion for reconsideration (Doc. No. 36) is granted;
- 22 2. The Clerk of the Court is directed to reopen this case;
- 23 3. Plaintiff’s lodged amended complaint (Doc. No. 35) shall serve as the operative
24 complaint;
- 25 4. Plaintiff’s motion to Re-set Deadline (Doc. No. 34) is denied as having been
26 rendered moot by this order; and

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1 5. This case is referred back to the assigned magistrate judge for further proceedings
2 including the screening of plaintiff's first amended complaint.

3 IT IS SO ORDERED.

4 Dated: **November 20, 2021**


UNITED STATES DISTRICT JUDGE